IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 934 OF 2004.

Sai Promoters & Developers, Pune. ..Appellant.

VERSUS.

Vasant Vithoba Jambhulkar.
& Ors. ..Respondents.

...

Mr. Y. S. Jahagirdar i/b C. D. Konale for the appellant.

Mr. C. M. Korde i/b Nitin Jamdar for the respondents.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : SEPTEMBER 14, 2004.

P.C.:-

1. Heard Mr.Y.S.Jahagirdar for the appellant and Mr.C.M.Korde for the respondent at length. Mr. Jahagirdar ultimately states that the appellant will file an application under Section 148 of the Code of Civil Procedure for consequential reliefs of injunction, prohibition etc. Mr. Korade, learned counsel for the respondent states that it may be clarified that all objections and contentions in respect of the application under section 148 of the CPC be kept open to the original defendant to contest before the trial court when the application is preferred. But we find that

since Mr. Jahagirdar has expressed his willingness to file an application under Section 148 of the Civil Procedure Code, this appeal will have to be disposed as not pressed and we accordingly dipose of this appeal. We make it clear that in case an application is filed by the appellant before the trial court under Section 148 of the Code of Civil Procedure, all the contentions of the original defendant - respondent are kept open for the consideration. If the application is made, the trial Court is to consider the same on its own merits on the basis of materials and evidence produced before it.

2. Appeal is disposed of in the above terms.

3. In view of the disposal of the appeal itself, civil application does not survive. Therefore, same is accordingly disposed of.

(R. S. MOHITE, J.) **(S.B.MHASE,J.)**